IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.342 OF 2001

Shri Laxman Mahadeo Chavan, .. Petitioner.

Vs

Shri Gajanan Ramchandra Salve, .. Respondent

Mr S.H.Joshi, for the petitioner.

Mr S.D.Patil, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 29.11.2005.

PC:

1. Heard the learned counsel for the parties.

2. This petition is directed against the concurrent findings recorded by the courts below, by which the rent suit filed by the respondent-landlord has been decreed on the ground of default. The petitioner claims that he was inducted as a tenant in the suit premises which he subsequently purchased by making a payment of Rs.11,000/- to the landlord from time to time resulting in him becoming owner thereof. The first such payment of Rs.3500/- was made by the petitioner on 23.10.1982. The second instalment was of Rs.4500/- paid on 1.1.1983

and the last instalment of Rs.3000/- was paid on 13.5.1983 towards the total price of the premises. Mr.Joshi, learned counsel for the petitioner, assailed the judgments of the courts below solely on the ground that the amount of Rs.4500/- paid on 1.1.83 was paid towards the construction of the house of one Salvi and the repairs of the suit premises and, therefore, the said sum was liable to be adjusted towards the arrears of rent of 39 months and since that had not been done, the impugned judgments cannot be sustained.

3. Admittedly, demand notice was issued by the respondent-landlord on 7.2.89 to which there was a reply by the petitioner on 1.3.89 and in the said reply, reference to the payment of Rs.11000/- on the aforestated dates had been made. However, neither in the reply nor in the written statement it was ever contended by the petitioner that the amount of Rs.4500/-, which was paid by the petitioner on 1.1.83, had to be adjusted towards the rent of arrears of rent. The petitioner has also not stated so in his evidence. The learned counsel for the petitioner then submitted that the aforestated amounts were paid as deposit and it ought to have been adjusted towards the arrears of rent. Though it was so submitted, that was

not the case made out either in the reply to the demand notice or in the written statement. As a matter of act, a specific case made out by the petitioner was that he had purchased the suit premises from the landlord and, therefore, he had even denied the relationship of landlord and tenant between the defendant and the plaintiff. As a matter of fact, the petitioner had also filed a regular Civil Suit No.219 of 1985 against the respondent-landlord for a decree of specific performance of the so-called agreement of purchase of the suit premises for which he allegedly had paid Rs.11000/-. Apart from the fact that the landlord denied the alleged transaction of sale, the said suit came to be dismissed long back. Both the Courts below, after examining the evidence on record and the pleadings of the parties, have categorically recorded a finding that there exists relationship as landlord and tenant between the plaintiff and the defendant and that the petitioner was in arrears of rent for 39 months. The finding is based on evidence and cannot be termed as perverse. No patent illegality in the judgments of the courts below is pointed out by the learned counsel for the petitioner. The judgment relied upon by the petitioner in K.Narasimha Rao V T.M.Naimuddin Ahmed - AIR 1996 SC 1214, is of no avail to the petitioner since in that

case the amount paid by the tenant for the repairs had to be adjusted towards the rent. There was no such understanding between the petitioner-tenant and the respondent-landlord. Nor such case is made out in the pleadings and the evidence on record. In fact, the landlord has clearly denied the case of payments by the tenant. It may be noticed that the decree of possession has already been executed and the landlord has taken possession of the suit premises on 4.2.2004. In the result, the writ petition fails and is dismissed as such.

(D.B.Bhosale,J.)